

Consideration of final adoption (following recall) of restructuring of definitions applicable to DNR properties and new standards governing Redbird State Riding Area and Interlake State Recreation Area; LSA Document #10-668(F); Administrative Cause No. 09-025T

During the May 17, 2011 meeting, the Natural Resources Commission gave final adoption to amendments for the restructuring of definitions applicable to DNR and for new standards to govern Redbird State Riding Area and Interlake State Recreation Area. The Commission also made changes to redefine “nut” and to add scientific names to definitions of “berry”, “fruit”, and “greens”. An effort was made to implement these changes within LSA formatting guidelines, and the rule proposal was then forwarded to the Attorney General for a review as to legality.

The Attorney General identified a clerical error in the cross-reference for 312 IAC 1-1-23(c), gratuitous language in 312 IAC 8-1.5-14, and a structural conflict in the wording of 312 IAC 8-2-17(e) and 312 IAC 8-2-17(f). The proposed rule was “recalled” as posted in the *Indiana Register* on June 29. The proposal is now submitted for final adoption (following recall) with language that is hoped to conform to the concepts expressed by the Commission in May, and consist with discussions with the Attorney General’s office to correct the clerical and structural inadequacies.

During the May 2011 meeting, the Commission also asked for a review by the DNR Property Use Committee of the definitions, with the possibility of further refinement. In addition, a Deputy Director expressed concerns for the definition of “motorized cart”. These items will be reviewed, and recommendations based on the review will be made to the Commission later this year.

The recommendation is for the Commission to give final adoption (following recall) to LSA Document 10-668 as set forth in *Exhibit A*.

“Exhibit A”

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #10-668(F)

DIGEST

Amends 312 IAC 1-1-23 concerning the definition of license. Adds 312 IAC 8-1.5 concerning definitions. Amends 312 IAC 8-2-5 concerning alcoholic beverages. Amends 312 IAC 8-2-8 concerning vehicles, trails, boats, and aircraft. Adds 312 IAC 8-2-17 to govern the use of Redbird State Riding Area and the use of Interlake State Recreation Area. Repeals 312 IAC 8-1-4. Effective 30 days after filing with the Publisher.

312 IAC 1-1-23; 312 IAC 8-1.5; 312 IAC 8-1-4; 312 IAC 8-2-5; 312 IAC 8-2-8; 312 IAC 8-2-17

SECTION 1. 312 IAC 1-1-23 IS AMENDED TO READ AS FOLLOWS:

312 IAC 1-1-23 "License" defined

Authority: IC 14-10-2-4

Affected: IC 4-21.5-1-8; IC 14-8-2-152; IC 14-11-4; IC 25

Sec. 23. "License"; (a) Except as provided in ~~IC 14-8-2-152~~, subsections (b) and (c), license has the meaning set forth in IC 4-21.5-1-8.

(b) For IC 14-11-4 and 312 IAC 2-3, license has the meaning set forth in IC 14-8-2-152.

(c) For 312 IAC 8, license has the meaning set forth in 312 IAC 8-1.5-13.

(Natural Resources Commission; 312 IAC 1-1-23; filed Dec 1, 1995, 10:00 a.m.: 19 IR 658; readopted filed May 8, 2001, 3:51 p.m.: 24 IR 2895; readopted filed May 29, 2007, 9:42 a.m.: 20070613-IR-312070111RFA)

SECTION 2. 312 IAC 8-1.5 IS ADDED TO READ AS FOLLOWS:

Rule 1.5. Definitions

312 IAC 8-1.5-1 Application

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 9-13-2-196; IC 9-25-2-4; IC 14-8-2-85; IC 14-8-2-261; IC 14-31-1

Sec. 1. The definitions in this rule are supplemental to those set forth at 312 IAC 1 and apply throughout this article.

(Natural Resources Commission; 312 IAC 8-1.5-1)

312 IAC 8-1.5-2 "Alcoholic beverage" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 7.1-1-3-5; IC 14

Sec. 2. "Alcoholic beverage" has the meaning set forth in IC 7.1-1-3-5.
(*Natural Resources Commission; 312 IAC 8-1.5-2*)

312 IAC 8-1.5-3 "Authorized representative" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 3. "Authorized representative" means the director or another person designated by the director.
(*Natural Resources Commission; 312 IAC 8-1.5-3*)

312 IAC 8-1.5-4 "Berry" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 4. "Berry" means the fruiting body of the following:

- (1) A blackberry (Rubus).**
- (2) A blueberry (Vaccinium).**
- (3) A dewberry (Rubus).**
- (4) An elderberry (Sambucus).**
- (5) A gooseberry (Ribes grossularia).**
- (6) A huckleberry (Ericaceae).**
- (7) A mulberry (Morus).**
- (8) A raspberry (Rubus).**
- (9) A serviceberry (Amelanchier).**
- (10) A strawberry (Fragaria).**

(*Natural Resources Commission; 312 IAC 8-1.5-4*)

312 IAC 8-1.5-5 "Campground" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 5. "Campground" means an area that accommodates any of the following:

- (1) Tents.**
- (2) Recreational vehicles.**
- (3) Vacation mobile homes.**

(*Natural Resources Commission; 312 IAC 8-1.5-5*)

312 IAC 8-1.5-6 "DNR property" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14-31-1

Sec. 6. (a) Except as provided in subsection (b), "DNR property" means land and water where any of the following applies:

- (1) The department has ownership.**
- (2) The department holds a lease, easement, or license.**
- (3) A dedication was made under IC 14-31-1.**
- (4) The department manages the property.**

(b) Exempted from DNR property are each of the following:

- (1) A public freshwater lake.**
- (2) A navigable waterway.**
- (3) Buildings or grounds (other than those of the Indiana state museum) not located at recreational, natural, or historic sites.**

An area is not exempted because the department has issued a lease, license, or concession to another person.

(Natural Resources Commission; 312 IAC 8-1.5-6)

312 IAC 8-1.5-7 "Fallen cone" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 7. "Fallen cone" means the fruiting body of a coniferous tree that is no longer attached to a living tree.

(Natural Resources Commission; 312 IAC 8-1.5-7)

312 IAC 8-1.5-8 "Firearm or bow and arrows" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 8. "Firearm or bow and arrows" means:

- (1) a firearm;**
- (2) an air gun;**
- (3) a CO₂ gun;**
- (4) a spear gun;**
- (5) a bow and arrows;**
- (6) a crossbow;**
- (7) a paint gun; or**
- (8) a similar mechanical device;**

that can be discharged and is capable of causing injury or death to a person or an animal or damage to property.

(Natural Resources Commission; 312 IAC 8-1.5-8)

312 IAC 8-1.5-9 "Fruit" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 9. "Fruit" means the fruiting body of the following:

- (1) Apples (Malus).**
- (2) Cherries (Prunus).**
- (3) Grapes (Vitis).**
- (4) Hawthorns (Crataegus).**
- (5) Pawpaws (Asimina).**
- (6) Pears (Pyrus).**
- (7) Persimmons (Diospyros).**
- (8) Plums (Prunus).**
- (9) Roses (Rosa).**

(Natural Resources Commission; 312 IAC 8-1.5-9)

312 IAC 8-1.5-10 "Greens" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 10. "Greens" means the aboveground shoots or leaves of the following:

- (1) Asparagus (Asparagus officinalis)**
- (2) Dandelion (Asteraceae).**
- (3) Mustard (Brassicaceae).**
- (4) Plantain (Plantaginaceae).**
- (5) Poke (Phytolaccaceae).**

(Natural Resources Commission; 312 IAC 8-1.5-10)

312 IAC 8-1.5-11 "Group boat dock" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 11. "Group boat dock" means an artificial basin or enclosure for the reception of boats on Lake Monroe or Mississinewa Lake that is owned and maintained by adjacent landowners for their private usage.

(Natural Resources Commission; 312 IAC 8-1.5-11)

312 IAC 8-1.5-12 "Leaf" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 12. "Leaf" means the leaf of a woody plant for use in a leaf collection or similar academic project.

(Natural Resources Commission; 312 IAC 8-1.5-12)

312 IAC 8-1.5-13 "License" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 13. (a) "License" means:

- (1) a license;**

- (2) a permit;
- (3) an agreement;
- (4) a contract;
- (5) a lease;
- (6) a certificate; or
- (7) any other form of approval;
issued by the department.

(b) A license may authorize an activity otherwise prohibited by this article.
(*Natural Resources Commission; 312 IAC 8-1.5-13*)

312 IAC 8-1.5-14 "Motorized cart" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 9-13-2; IC 14

Sec. 14. (a) "Motorized cart" means a conveyance that is:

- (1) motor driven, either by gas or electricity;
- (2) used to carry passengers or equipment; and
- (3) smaller than the types of motor vehicles required to be registered by the bureau of motor vehicles such as a:
 - (A) passenger motor vehicle (as defined in IC 9-13-2-123);
 - (B) recreational vehicle (as defined in IC 9-13-2-150); or
 - (C) truck (as defined in IC 9-13-2-188).

(b) A motorized cart may be characterized as a golf cart, utility cart, or similar form of motor vehicle.

(c) The term does not include:

- (1) an electric personal assistive mobility device (as defined in IC 9-13-2-49.3);
- (2) a motorcycle (as defined in IC 9-13-2-108);
- (3) a motor scooter (as defined in IC 9-13-2-104);
- (4) a motorized bicycle (as defined in IC 9-13-2-109); or
- (5) an off-road vehicle.

(*Natural Resources Commission; 312 IAC 8-1.5-14*)

312 IAC 8-1.5-15 "Mushroom" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 15. "Mushroom" means edible fungi.

(*Natural Resources Commission; 312 IAC 8-1.5-15*)

312 IAC 8-1.5-16 "Nut" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 16. "Nut" means a fruit or seed of any of the following:

- (1) Hazelnut (Corylus).**
- (2) Hickory (Carya).**
- (3) Oak (Quercus).**
- (4) Pecan (Carya).**
- (5) Walnut (Juglans).**

(Natural Resources Commission; 312 IAC 8-1.5-16)

312 IAC 8-1.5-17 "Off-road vehicle" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 17. (a) "Off-road vehicle" means a motor driven vehicle capable of cross-country travel:

- (1) without benefit of a road; and**
- (2) on or immediately over:**
 - (A) land;**
 - (B) water;**
 - (C) snow;**
 - (D) ice;**
 - (E) marsh;**
 - (F) swampland; or**
 - (G) other natural terrain.**

(b) The term includes the following:

- (1) A multi-wheel drive or low pressure tire vehicle.**
- (2) An amphibious machine.**
- (3) A ground effect air cushion vehicle.**
- (4) Other means of transportation deriving motive power from a source other than muscle or wind.**

(c) The term does not include the following:

- (1) A farm vehicle being used for farming.**
- (2) A vehicle used for military or law enforcement purposes.**
- (3) A construction, mining, or other industrial related vehicle used in performance of the vehicle's common function.**
- (4) A snowmobile.**
- (5) A registered aircraft.**
- (6) Any other vehicle properly registered by the bureau of motor vehicles.**
- (7) Any boat that is registered under Indiana statutes.**
- (8) A golf cart vehicle.**

(Natural Resources Commission; 312 IAC 8-1.5-17)

312 IAC 8-1.5-18 "Operate" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 18. "Operate" means to:

- (1) ride in or on; and**
- (2) be in actual physical control of the operation of;
a motorized cart, an off-road vehicle, or a vehicle.**

(Natural Resources Commission; 312 IAC 8-1.5-18)

312 IAC 8-1.5-19 "Public road" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 9-25-2-4; IC 14

Sec. 19. "Public road" means a public highway under IC 9-25-2-4 that is designated by the department for use by the public.

(Natural Resources Commission; 312 IAC 8-1.5-19)

312 IAC 8-1.5-20 "Recreation area" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 20. "Recreation area" means an area that is managed by the department for specific recreation activities.

(Natural Resources Commission; 312 IAC 8-1.5-20)

312 IAC 8-1.5-21 "Snowmobile" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14-8-2-261

Sec. 21. "Snowmobile" has the meaning set forth in IC 14-8-2-261.

(Natural Resources Commission; 312 IAC 8-1.5-21)

312 IAC 8-1.5-22 "Vehicle" defined

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 22. "Vehicle" means:

- (1) an automobile;**
- (2) a motorcycle;**
- (3) a truck;**
- (4) a trailer;**
- (5) a semitrailer;**
- (6) a tractor;**
- (7) a bus;**
- (8) a school bus;**
- (9) a recreational vehicle;**
- (10) a trailer or semitrailer used in the transportation of a boat; or**
- (11) a motorized bicycle.**

(Natural Resources Commission; 312 IAC 8-1.5-22)

SECTION 3. 312 IAC 8-2-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-5 Alcoholic beverages

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 14

Sec. 5. A person must not possess or consume an alcoholic beverage at any of the following locations:

(1) Indiana Dunes State Park.

(2) Redbird State Riding Area.

(3) Interlake State Recreation Area.

~~(2)~~ **(4)** A swimming beach or pool.

~~(3)~~ **(5)** A shooting range.

(Natural Resources Commission; 312 IAC 8-2-5; filed Oct 28, 1998, 3:32 p.m.: 22 IR 740, eff Jan 1, 1999; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; readopted filed Mar 25, 2010, 2:58 p.m.: 20100421-IR-312100037RFA)

SECTION 4. 312 IAC 8-2-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 8-2-8 Vehicles, trails, boats, and aircraft

Authority: IC 14-10-2-1; IC 14-10-2-4; IC 14-11-2-1; IC 14-19-1-1

Affected: IC 14-19-1-0.5; IC 14-22-11-1

Sec. 8. (a) A person must not operate a vehicle:

(1) at a speed greater than:

(A) thirty (30) miles per hour on straight, open stretches of road; or

(B) fifteen (15) miles per hour on steep grades or curves or where posted; or

(2) except as provided in section 17 of this rule, other than on a public road.

(b) A person must not park:

(1) a vehicle;

(2) a boat; or

(3) associated equipment;

except at a site designated by the department.

(c) A person must not operate a motorized cart on a DNR property except as follows:

(1) The person must demonstrate both of the following:

(A) The person holds a valid driver's license.

(B) The person:

(i) is at least sixty-five (65) years of age that is evidenced by the valid driver's license; or

(ii) has a disability, as defined by the federal Social Security Administration guidelines (42 U.S.C. 416), that is evidenced by documentation from the Social Security Administration.

(2) A person must not operate a motorized cart other than within a campground.

(3) A motorized cart must, if operated between the hours of sunset and sunrise, have a lamp on the:

(A) front exhibiting a white light visible at least five hundred (500) feet ahead of the motorized cart; and

(B) rear exhibiting a red light visible at least five hundred (500) feet behind the motorized cart.

(4) A restriction applicable to the operation, parking, or other use of a vehicle under this section also applies to a motorized cart.

~~(5) As used in this subsection, "campground" means an area where provisions are made for the accommodation of any of the following:~~

~~(A) Tents.~~

~~(B) Recreational vehicles.~~

~~(C) Vacation mobile homes.~~

~~(6)~~ (5) As used in this subsection, "motorized cart" has the meaning set forth in IC 14-19-1-0.5.

(d) A person moving cross-country on a trail must remain on the designated pathway for the trail. A person must not:

(1) hike;

(2) bike;

(3) ski;

(4) horseback ride; or

(5) operate an off-road vehicle or snowmobile;

except on a trail designated for the purpose. A person must not ride, lead, drive, or hitch an animal, except where designated by the department.

(e) A person must not launch, dock, or moor a boat, except:

(1) for approved periods; and

(2) at sites designated by the department for those purposes.

(f) A person must not:

(1) leave a boat unattended in a courtesy dock provided by the department; or

(2) moor a boat at a designated group dock or mooring post unless the boat exhibits a valid mooring permit.

(g) A person must not operate or maintain a boat on a lake unless the person does each of the following:

(1) Operates the boat according to any horsepower or speed restrictions applicable to the lake.

(2) Except as provided in subdivisions (3) and (6), obtains and displays a valid annual boat lake permit as follows:

(A) Purchase from the department a boat lake permit under a fee schedule approved by the commission.

(B) Affix the permit in a visible location on the forward half of the boat.

(3) Except as provided in subdivision (6), for a motorboat, obtains and displays a valid annual motorboat lake permit as follows:

(A) Purchase from the department a motorboat lake permit under a fee scheduled approved by the commission.

(B) Affix the permit in a visible location on the port (left) side immediately following the excise tax decal or registration number.

(4) For a lake containing fewer than three hundred (300) acres, operates a motorboat only if the motorboat is either of the following:

(A) Powered by an electric trolling motor with not more than:

(i) two (2) 12-volt batteries; or

(ii) one (1) 24-volt battery.

(B) Operated on Loon Lake, Otter Lake, or Blue Grass Pit in the Blue Grass Fish and Wildlife Area at not greater than idle speed.

(5) Removes a boat from the lake before the expiration of fourteen (14) consecutive days, unless the boat is moored in an area where the department has approved mooring for a longer duration.

(6) A lake located on a DNR property administered by the division of fish and wildlife is exempted from subdivisions (2) and (3).

(h) A person must not leave a vehicle, boat, or associated equipment at a DNR property unless the person is actively engaged in the use of:

(1) a DNR property; or

(2) an adjacent:

(A) public freshwater lake; or

(B) navigable waterway.

(i) A person must not land, taxi, take-off, park, or moor:

(1) an aircraft;

(2) a hang glider;

(3) an ultralite;

(4) a powered model aircraft; or

(5) a hot air balloon;

except at a site designated for that purpose or pursuant to a license.

(Natural Resources Commission; 312 IAC 8-2-8; filed Oct 28, 1998, 3:32 p.m.: 22 IR 741, eff Jan 1, 1999; filed Nov 5, 1999, 10:14 a.m.: 23 IR 555, eff Jan 1, 2000; filed Jun 17, 2002, 4:13 p.m.: 25 IR 3715; readopted filed Nov 17, 2004, 11:00 a.m.: 28 IR 1315; filed Sep 14, 2005, 2:45 p.m.: 29 IR 463, eff Jan 1, 2006; filed Jun 9, 2006, 3:40 p.m.: 20060705-IR-312050344FRA; filed Jun 29, 2007, 2:32 p.m.: 20070725-IR-312060333FRA; readopted filed Mar 25, 2010, 2:58 p.m.: 20100421-IR-312100037RFA)

SECTION 5. 312 IAC 8-2-17 IS ADDED TO READ AS FOLLOWS:

312 IAC 8-2-17 Redbird State Riding Area and Interlake State Recreation Area

Authority: IC 14-10-2-4; IC 14-11-2-1

Affected: IC 9-18-1; IC 14-16-1

Sec. 17. (a) This section establishes requirements that supplement or modify requirements otherwise applicable to a DNR property for both of the following:

(1) Redbird State Riding Area in Greene County and Sullivan County.

(2) Interlake State Recreation Area in Pike County and Warrick County.

(b) Every vehicle must be registered under IC 9-18-1, and every off-road vehicle must be registered under IC 14-16-1.

(c) Every vehicle or off-road vehicle must be equipped with functioning spark arrestors and mufflers.

(d) Tire chains and studded tires are prohibited.

(e) The operator of an off-road vehicle who is under sixteen (16) years of age must be directly supervised by a parent or guardian who possesses a valid driver's license.

(f) The operator of a vehicle must:

(1) be at least sixteen (16) years of age; and

(2) possess a valid driver's license.

(g) A vehicle must be equipped with a roll bar or other overhead protection for the benefit of the operator and any passenger. The operator and any passenger in a vehicle must wear a seatbelt.

(h) Except as otherwise provided in this subsection, the operator and any passenger on a motorcycle or an off-road vehicle must wear a motorcycle safety helmet that complies with 49 CFR 571.218* while the off-road vehicle or motorcycle is in operation. A safety helmet is not required on an off-road vehicle with either of the following:

(1) A fully-enclosed metal cab.

(2) Both of the following:

(A) Roll bar protection.

(B) A seatbelt or harness worn by the operator and any passenger.

***This document is incorporated by reference. Copies may be obtained from the Government Printing Office, 732 North Capitol Street NW, Washington, D.C. 20401, or online at <http://bookstore.gpo.gov/>. The document is available for review and copying at the Indiana Natural Resources Commission, Division of Hearings, 100 North Senate Avenue, Room N501, Indianapolis, IN, 46204.**

(Natural Resources Commission; 312 IAC 8-2-17)

SECTION 6. 312 IAC 8-1-4 IS REPEALED.